LITAR SISTEM ADILKAP SDN BHD v. LEE TEAK HOCK & ANOR

COURT OF APPEAL, PUTRAJAYA
MARY LIM JCA
HAS ZANAH MEHAT JCA
ABU BAKAR JAIS JCA
[APPEAL NO: A-02(NCC)(A)-1508-08-2019]
12 JUNE 2020

COMPANY LAW: *Winding up – Appeal against – Whether company carried out moneylending business without being duly licensed – Whether directors of company acted in directors' own interest rather than in interests of members – Whether there was contravention of ss. 465(1)(j) & 465(1)(f) of Companies Act 2016 – Whether just and equitable for company to be wound up pursuant to s. 465(1)(h) of Companies Act 2016*

STATUTORY INTERPRETATION: *Construction of statute – Interpretation – 'licensed business' – Whether definition of 'licensed business' includes moneylending under Moneylenders Act 1951 – Whether winding up of company could be premised on s. 465(1)(j) of Companies Act 2016 – Financial Services Act 2013, s. 2 – Islamic Financial Services Act 2013, s. 2*

This was an appeal by the appellant against the decision of the High Court that allowed the winding-up petition filed by the respondents against the appellant. Before being wound up, the appellant was a company engaged in the business of a driving institute and the respondents were directors and shareholders of the appellant. On 6 October 2017, the first and second respondents were removed from being directors by the appellant on the basis of alleged misappropriation of funds. On 12 January 2000, there was a resolution ('resolution 1') passed by the appellant for a moneylending license belonging to Lee Tiak Kooy ('LTK'), who was the director and biggest shareholder of the appellant, to be transferred to the appellant without any payment. LTK held this license in another entity TK Lee Enterprise ('Enterprise'). This license eventually was never transferred despite resolution 1 which was signed by the first respondent. On 10 March 2000, another resolution was passed ('resolution 2') for the appellant to take over the business of moneylending from enterprise by paying RM77,517.13, which also failed to happen despite resolution 2 being signed by the first respondent. Another resolution ('resolution 3') was passed on 23 June 2004 by the appellant for RM171,272.74 to be transferred or paid to enterprise, and this resolution was not signed by the first respondent. Essentially, the respondents were not satisfied that the appellant was also engaged in moneylending illegally and that moneys had been transferred to enterprise

unlawfully. On 19 September 2019, the respondents filed a petition to wind up the appellant for the following reasons (i) the appellant had contravened s. 465(1)(j) of the Companies Act 2016 ('CA') for carrying out a moneylending business without being duly licensed; (ii) the appellant's directors had acted in the affairs of the company in the directors' own interests rather than in the interests of the members as a whole which was in contravention of s. 465(1)(f) of the CA; and (iii) it was just and equitable that the appellant be wound up pursuant to s. 465(1)(h) of the CA. The High Court allowed the respondents' petition to wind up the appellant pursuant to the three stated statutory provisions. Hence, this appeal.

Held (allowing appeal; setting aside winding-up order)
Per Abu Bakar Jais JCA delivering the judgment of the court:

(1) Section 465(1)(j) of the CA must be read together as it could not stand without making reference to the respective s. 2 of the Financial Services Act 2013 ('FSA') and the Islamic Financial Services Act 2013 ('IFSA'). The definitions of 'licensed business' in both FSA and IFSA do not include moneylending under Moneylenders Act 1951 ('MA') which the appellant was alleged to be involved in. Therefore, the winding up of the appellant could not be premised on s. 465(1)(j) of the CA. The very basis to wind up the appellant based on this section of the CA could not be maintained because moneylending was not within the meaning of 'licensed business' in this statutory provision. (paras 24 &25)

(2) The High Court had allowed the winding up based on s. 465(1)(f) of the CA as there were resolutions passed by the appellant *ie*, resolution 1 on 12 January 2000, resolution 2 on 10 March 2000 and resolution 3 on 23 June 2004. However, it took more than a decade for the respondents to file the winding-up petition on 19 September 2019 in respect of matters arising from these three resolutions. The respondents had taken too long a time. The time it had taken the respondents to apply for the winding up of the appellant was an important consideration whether the petition ought to be allowed or *vice versa*. Taking too long a time lent credence to the argument that there was an inordinate delay that showed the respondents had acquiesced to the resolutions and transfers of moneys to enterprise. It also tended to show on a balance of probabilities that they had filed the petition only because they were removed as directors of the appellant as indicated on 6 October 2017. (paras 34-37)

(3) The first respondent had agreed to the passing of these resolutions. Thus, the first respondent was a party who knew fully well of these resolutions. Since the first respondent was complicit in the matters that arose from the first two resolutions, no relief should be granted in respect of the petition to wind up the appellant. There was also evidence

to show that the first respondent, with LTK, had instructed the bank for the payment of RM171,272.74 from the appellant to enterprise. In this regard, a petition to wind up a company could only be granted if the petitioner is before the court with clean hands. (para 44)

(4) The timing of the petition was material. In this regard, when the petition was filed, there was no evidence to suggest the appellant was still engaged in moneylending. This court could not find that the matters complained by the respondents still persisted at the time of the presentation of the petition. The resolutions and matters arising thereafter were many years before the filing of the petition. In short, the matters were already stale. Further, there was no evidence to prove that the appellant was not doing well and was running at a loss. A viable solvent company assists the economy of a nation. It provides jobs for its employees especially in the present trying times. For this reason, the appellant should not be simply wound up. The evidence on the contrary indicated that the winding up of the appellant would not be justifiable or equitable. All the foregoing findings based on the facts narrated were also consistent with the principle that the winding up of a company should be a remedy of the last resort. (paras 38, 40, 48, 49 & 52)

Case(s) referred to:

Dato' Ting Check Sii v. Datuk Hj Mohamad Tufail Mahmud & Anor [2008] 7 CLJ 453 HC ***(refd)***

Eng Man Hin & Anor v. King's Confectioery Sdn Bhd & Ors [2005] 8 CLJ 77 HC ***(refd)***

Foo Jong Wee & Ors v. Hj Afifi Hj Hassan [2016] 6 CLJ 696 CA ***(refd)***

Hoy Pak Kwai v. Leong Kon Fah & Ors [2007] 1 CLJ 121 CA ***(refd)***

Kumagai Gumi Co Ltd v. Zenecon-Kumagai Sdn Bhd & Ors And Another Application [1994] 1 LNS 73 HC ***(refd)***

Lee Ing Chin & Ors v. Gan Yook Chin & Anor [2003] 2 CLJ 19 CA ***(refd)***

Liew Jui Hua & Ors v. Johor Property (M) Sdn Bhd [1998] 2 CLJ Supp 34 HC ***(refd)***

Owen Sim Liang Khui v. Piasau Jaya Sdn Bhd & Anor [1996] 4 CLJ 716 FC ***(refd)***

Re Fildes Bros Ltd [1970] 1 WLR 592 ***(refd)***

Re Senson Auto Supplies Sdn Bhd [1987] 1 LNS 110 HC ***(refd)***

Supreme Envy Sdn Bhd v. Abul Rahim Sinon & Anor [2016] 1 LNS 1535 CA ***(foll)***

TM Feroze Khan & Ors v. Meera Hussain TM Mohamed Mydin [1999] 4 CLJ 373 FC ***(refd)***

Weng Wah Construction Co Sdn Bhd v. Yik Foong Development Sdn Bhd [1994] 3 CLJ 511 HC ***(refd)***

Yai Yen Hon & Ors v. Lim Mong Sam [1997] 2 CLJ 812 CA ***(refd)***

Yew Chye Heng & Anor v. Venice Hill Resort Living Sdn Bhd (No 2) [2007] 1 LNS 405 HC ***(refd)***

Legislation referred to:

Central Bank of Malaysia Act 2009, s. 2(1)
Companies Act 2016, ss. 2, 465(1)(f), (h), (j)
Financial Services Act 2013, ss. 2, 193
Islamic Financial Services Act 2013, s. 2

For the appellants - Wong Hin Loong, James Huntzen Ong & Chun Chee Chong; M/s C C Chun & Co

For the respondent - Amir Faliq, Syahidah Ismail & Naim Kamaruddin; M/s Amirfaliq & Syahidah

[Editor's note: For the High Court judgment, please see Lee Teak Hoc & Satu Lagi lwn. Litar Sistem Adilkap Sdn Bhd [2019] 1 LNS 1747 (overruled).]

Reported by Suhainah Wahiduddin

JUDGMENT

Abu Bakar Jais JCA:

Introduction

[1] This is an appeal by the appellant against the decision of the High Court that allowed the winding-up petition filed by the respondents against the appellant.

Brief Facts

[2] The appellant before being wound up, was a company incorporated under the Companies Act 1965 since 1993 with the object of engaging in the business of a driving institute. The respondents were directors and shareholders of the appellant. The first respondent was appointed as a director from 1993 to 2000 and from June 2016 to October 2017. The second respondent became a director from 1 April 2017 to 6 October 2017. They were removed from being directors by the appellant on 6 October 2017 on the basis of alleged misappropriation of some funds. The first respondent is the father of the second respondent.

[3] On 12 January 2000 there was a resolution ("resolution 1") passed by the appellant for a moneylending license belonging to Lee Tiak Kooy ("LTK") who was the director and biggest shareholder of the appellant to be transferred to the appellant without any payment. LTK held this license in another entity, TK Lee Enterprise ("enterprise"). The appellant at p. 4 of its written submission pointed out that enterprise is a sole proprietorship owned by LTK. There is no dispute this license eventually was never transferred despite resolution 1. The first respondent signed resolution 1.

[4] On 10 March 2000 another resolution was passed ("resolution 2") by the appellant. Resolution 2 is for the appellant to take over the business of moneylending from enterprise owned by LTK by paying RM77,517.13. This also failed to happen despite resolution 2 although there is evidence that an amount of money was paid to enterprise. The first respondent also signed resolution 2.

[5] On 23 June 2004 there was another resolution passed by the appellant, signed by LTK and another director, Mohd Nasir bin Othman ("resolution 3"). This resolution was for RM171,272.74 to be transferred or paid to enterprise. There is no dispute the first respondent did not sign this resolution.

[6] Ten years later, on 24 November 2014 another amount of RM239,077.39 from the appellant went to enterprise. Two days later this amount was returned to the appellant by enterprise.

[7] Essentially the respondents were not satisfied that the appellant was also engaging in moneylending illegally and moneys had been transferred to enterprise unlawfully.

[8] Of significance is that the petition to wind up the appellant was filed only on 19 September 2019.

[9] The petition to wind up the appellant was filed for the following reasons:

(i) the appellant had contravened s. 465(1)(j) of the Companies Act 2016 ("CA") for carrying out a moneylending business without being duly licensed;

(ii) the appellant's directors had acted in the affairs of the company in the directors' own interests rather than in the interests of the members as a whole or acted in any other manner which appears to be unfair or unjust to members in contravention of s. 465(1)(f) of the CA; and

(iii) it is just and equitable the appellant be wound up pursuant to s. 465(1)(h) of the CA.

High Court's Decision

[10] For the application to wind up the appellant pursuant to s. 465(1)(j) of the CA which is for carrying out a licensed business without being duly licensed, the learned High Court Judge found that enterprise is not a subsidiary of the appellant. Enterprise is owned by LTK. Enterprise is a partnership in the business of moneylending and not related at all to the appellant. The company search did not show that enterprise is a subsidiary of the appellant at any point of time. There were resolution 1 and resolution 2 passed by the appellant for the transfer of moneylending business from enterprise to the appellant and one of these required payment to be made. However, the moneylending business was never transferred to the appellant.

[11] The appellant did represent to the public that it was involved in the moneylending business despite not having a license for it. The learned High Court Judge further found the appellant also admitted it was involved in this business through its own financial statement from 2006 until 2010.

[12] Thus the learned High Court Judge decided the appellant should be wound up pursuant to this statutory provision.

[13] In respect of the application for winding up pursuant to s. 465(1)(f) of the CA on the basis that the appellant's directors had acted in their own interests or acted in a manner which is unfair or unjust to its members, the learned High Court Judge also decided that the appellant should be wound up on this ground.

[14] First, this is because resolution 2 had contradicted resolution 1. Resolution 2 had allowed for payment of RM77,513.13 to enterprise, while initially, resolution 1 only approved the transfer of the moneylending business by enterprise to the appellant without any payment. And this payment was indeed made to enterprise according to the finding of the learned High Court Judge.

[15] His Lordship also found that based on resolution 3 another amount of RM171,272.74 was transferred from the appellant to enterprise without any valid reasons. This is an abused of the appellant's financial accounts as enterprise is not a subsidiary of the appellant.

[16] The learned High Court Judge also found it was not true that the first respondent knew about this transfer as the resolution for this did not specify the reason for the transfer.

[17] The learned High Court Judge also accepted that the respondents did not know the reasons for the transfer of moneys initially but came to know only subsequently from the accountants that it was for enterprise to renew its license for the moneylending business.

[18] In respect of the application for winding up pursuant to s. 465(1)(h) of the CA for the reason it is just and equitable for the appellant to be wound up, the learned High Court Judge found that since the appellant was involved in a licensed business without being duly licensed, it was appropriate that this provision be invoked against the appellant. And since it has been found that the appellant's directors had acted in their own personal interests, it was also appropriate to wind up the appellant pursuant to this statutory provision.

[19] Hence, the High Court allowed the respondents' petition to wind up the appellant pursuant to the three stated statutory provisions of the CA.

Our Analysis And Decision

[20] It is most convenient to begin with the decision of the High Court to wind up the appellant pursuant to s. 465(1)(j) of the CA. This statutory provision states as follows:

> The Court may order the winding up if the company has carried on a **licensed business** without being duly licensed or the company has accepted, received or taken deposits in Malaysia, in contravention of the Financial Services Act 2013 or the Islamic Financial Services Act 2013, as the case may be.
>
> (emphasis added)

[21] First, there is a need to note the word "licensed business" above. What it means is explained by s. 2 of the CA that states:

> "licensed business" has the meaning assigned to it in the Financial Services Act 2013 [Act 758] or the Islamic Financial Services Act 2013 [Act 759], as the case may be.

[22] Second, pursuant to the above, what is the meaning of "licensed business" in the Financial Services Act 2013 ("FSA")? For this, s. 2 of the FSA states:

> licensed business" means banking business, insurance business or investment banking business.

[23] Third, what is the meaning of "licensed business" in the Islamic Financial Services Act 2013 ("IFSA")? For this s. 2 of IFSA states:

> "licensed business" means Islamic banking business, takaful business, international Islamic banking business or international takaful business.

[24] Thus what is clear is that s. 465(1)(j) of the CA must be read together as it cannot stand without making reference to the respective s. 2 of FSA and IFSA. And the definitions of "licensed business" in both FSA and IFSA do not include moneylending under Moneylenders Act 1951 ("MA") which the appellant is alleged to be involved in.

[25] Therefore, with respect to the High Court, the winding up of the appellant cannot be premised on s. 465(1)(j) of the CA. The very basis to wind up the appellant based on this section of the CA cannot be maintained because moneylending is not within the meaning of "licensed business" in this statutory provision. This provision with respect had wrongly been applied by the High Court in relation to the facts of this case.

[26] Further, s. 465(1)(j) of the CA is only applicable to wind up a company which without a valid license, is involved in banking business, insurance business or investment banking business under FSA and Islamic banking business, Takaful business, international Islamic banking business or international Takaful business under IFSA. Again, it cannot be applicable for moneylending under the MA.

[27] This is reinforced by s. 193 of FSA which allows only Bank Negara (Central Bank) and certainly not the respondents to apply for the winding up of a company under this statute. This provision states:

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> ... the Bank may recommend to the Minister and the Minister may on such recommendation, authorise the Bank to file an application to the High Court for the winding up of an institution and the High Court may order the winding up of an institution pursuant to the application filed by the Bank under this Division.

B **[28]** The word "bank" above means Central Bank of Malaysia pursuant to s. 2 of FSA read together with s. 2(1) of Central Bank of Malaysia Act 2009.

[29] In fairness to the High Court, the legal argument above pertaining to the word "licensed business" in s. 465(1)(j) of the CA was not canvassed by the appellant at the time of the hearing of the petition. It only came up before
C us for the first time in the present appeal. Nonetheless we are minded to hear the argument as it is purely on a point of law. In this regard we would follow the Court of Appeal's decision in *Supreme Envy Sdn Bhd v. Abul Rahim Sinon & Anor* [2016] 1 LNS 1535; [2017] 1 MLJ 43. In this case the Court of Appeal decided that it would hear a point of law as it could be heard at any
D time despite not being raised earlier.

[30] We will now proceed to address the winding up pursuant to s. 465(1)(f) and s. 465(1)(h) of the CA. As they are interrelated, we believe it can be dealt with together.

E **[31]** In respect of the decision by the High Court to wind up the appellant pursuant to s. 465(1)(f) of the CA, this provision states as follows:

> The Court may order the winding up if the directors have acted in the affairs of the company in the directors' own interests rather than in the interests of the members as a whole or acted in any other manner which appears to be unfair or unjust to members.

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[32] Whilst for the winding up pursuant to s. 465(1)(h) of the CA, this provision states as follows:

> The Court may order the winding up if the Court is of the opinion that it is just and equitable that the company be wound up.

G **[33]** In the case of *Yew Chye Heng & Anor v. Venice Hill Resort Living Sdn Bhd (No 2)* [2007] 1 LNS 405; [2007] 7 MLJ 566, the main reason advanced by the petitioner for the winding up of the developer company was because the company was unable to pay its debt. Another reason advanced was that the company had constructed a block of condominium without the necessary
H license. It was argued that if the winding up order is not made, then this would tantamount to legalising the illegal act of the respondent company. The petition was allowed by the High Court in this case. Thus operating without a license has been considered as illegal and where a winding-up order has been issued. Hence, if the operation of a company is founded on
I illegality, a winding up of a company can also be applied based on the ground

that it is just and equitable. Nonetheless, whether such winding up is allowed depends on the circumstances of each case (see the Court of Appeal's case of *Foo Jong Wee & Ors v. Hj Afifi Hj Hassan* [2016] 6 CLJ 696).

[34] As could be recalled, the learned High Court Judge allowed the winding up based on s. 465(1)(f) of the CA as there were two resolutions passed by the appellant. This is with regard to resolution 1 indicating the moneylending business of enterprise will be transferred to the appellant without any payment and resolution 2 by the appellant approving payment of RM77,513.13 to enterprise for this transfer. And the learned High Court Judge found that this amount was paid to enterprise.

[35] In this regard, it should be recalled that resolution 1 was passed on 12 January 2000. While resolution 2 was passed on 10 March 2000. On 23 June 2004, resolution 3 was passed by the appellant. And it should also be recalled, the petition to wind up the appellant was filed by both respondents only on 19 September 2019.

[36] However based on the foregoing, it took more than a decade for both respondents to file the winding-up petition in respect of matters arising from these three resolutions. And it took nearly five years to file the petition in relation to the transfer on 24 November 2014 of RM239,077.39 to enterprise.

[37] In this regard, both respondents took too long a time. The time it has taken the respondents to apply for the winding up of the appellant is an important consideration whether the petition ought to be allowed or *vice versa*. Taking too long a time lends credence to the argument there was inordinate delay that showed the respondents had acquiesced to the resolutions and transfers of moneys to enterprise. It also tends to show on a balance of probabilities that they had filed the petition only because they were removed as directors of the appellant as indicated on 6 October 2017.

[38] Although the company search as of 3 August 2018 (p. 74 of ikatan teras perayu – exh. L1) revealed that the appellant's type of business was still a driving institute and a licensed moneylender, it must necessarily be a question of fact whether it was still engaged in moneylending when the petition was filed. And in this regard, when the petition was filed there was no evidence to suggest the appellant was still engaged in moneylending.

[39] The Federal Court's case of *Owen Sim Liang Khui v. Piasau Jaya Sdn Bhd & Anor* [1996] 4 CLJ 716; [1996] 1 MLJ 113 dealt with a case of winding up and the issue that came before the court was whether an act of oppression on a shareholder persisted at the time of presentation of the winding-up petition. The Federal Court decided:

> Where attention is called to particular acts or omissions, it is sufficient that the effects of a single act or omission are such that they persist at the date of presentation of the petition.

[40] The timing of the petition is therefore material. However in the appeal before us, we could not find that the matters complained by the respondents still persist at the time of the presentation of the petition. The resolutions and matters arising thereafter were many years before the filing of the petition. In short the matters are already stale.

[41] The Federal Court quoted with approval the High Court's case of *Re Senson Auto Supplies Sdn Bhd* [1987] 1 LNS 110; [1988] 1 MLJ 326 where it is said as follows:

> It is settled law that delay by petitioners in initiating proceedings after they have realised that they have been victims of a scheme of oppression will induce the court to refuse relief, since this indicates that they have acquiesced in the conduct complained about and their complaints are not therefore made in good faith ...

[42] For the winding up of a company based on just and equitable ground, Megarry J in the case of *Re Fildes Bros Ltd* [1970] 1 WLR 592 said:

> If on the facts existing when the petition was presented it was then just and equitable to wind up the company but subsequently it was ceased to be so, I do not think a winding up order should be made.
>
> ... a winding up order under this head must be based on subsisting facts and not on past history.

[43] We are aware of the Federal Court's case of *TM Feroze Khan & Ors v. Meera Hussain TM Mohamed Mydin* [1999] 4 CLJ 373; [2000] 1 MLJ 321 that held whether there is inordinate delay depends on the facts and circumstances of each particular case. Based on the facts explained, we are of the view there was indeed inordinate delay in the present case.

[44] Further as indicated, the first respondent agreed to the passing of these resolutions. Thus, the first respondent was a party who knew fully well of these resolutions. Since the first respondent was complicit in the matters that arose from the first two resolutions, no relief should be granted in respect of the petition to wind up the appellant. There was also evidence to show that the first respondent with LTK had instructed the bank for the payment of RM171,272.74 from the appellant to enterprise. In this regard, a petition to wind up a company can only be granted if the petitioner is before the court with clean hands. The facts narrated do not show this in the present appeal (see *Yai Yen Hon & Ors v. Lim Mong Sam* [1997] 2 CLJ 812; [1997] 2 MLJ 190 and *Kumagai Gumi Co Ltd v. Zenecon-Kumagai Sdn Bhd & Ors And Another Application* [1994] 1 LNS 73; [1994] 2 MLJ 789).

[45] In *Eng Man Hin & Anor v. King's Confectionery Sdn Bhd & Ors* [2005] 8 CLJ 77 Ramly Ali J (later FCJ) said:

> This is a case where the petitioners are trying to make a mountain of alleged inequities out of a molehill. The allegations are made in an attempt to wind-up the company under the just and equitable provision of s. 218(1)(i) of the Companies Act 1965. The petitioners have failed to

> discharge the burden of proof that there is a violation of their equitable rights or any established equitable principle as to why they are not bound by the company's articles of association. They have also failed to prove the existence of the legitimate expectation, the breach of which forms the basis of their Petition. *The facts show that the petitioners' complaints relate to actions taken by the respondents for the benefit of the company due to the petitioners' own conduct. The petitioners are therefore the cause for the actions taken. As a result, the petitioners are not entitled to seek the aid of this court's equitable jurisdiction because they have not come with clean hands.*
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> (emphasis added)

[46] It is also relevant to note that almost all the members of the appellant do not agree that the appellant be wound up. Interestingly the respondents chose not to answer this assertion in their affidavits.

[47] There is also no loss in respect of the moneys transferred to enterprise. In this regard, there is evidence the amount of RM239,077.39 was returned to the appellant on 26 November 2014. This amount includes interest for the amount RM171,272.74 which was handed earlier to enterprise. The respondents admitted the return of RM239,077.39.

[48] The appellant in fact was a going concern before the winding up. There is no evidence to prove that it was not doing well and was running at a loss. A viable solvent company assists the economy of a nation. It provides jobs for its employees especially in the present trying times. For this reason too the appellant should not be simply wound up. In the Court of Appeal's case of *Hoy Pak Kwai v. Leong Kon Fah & Ors* [2007] 1 CLJ 121 James Foong JCA (as he then was) in delivering judgment said:

> Though I believe that the appellant has lost confidence with the first and second respondents and *vice versa* I am of the opinion that the substratum of the company is still intact. The company continues to operate as an entity separate and distinct from its shareholders. As an ongoing profitable enterprise there is no reason why the court should order it to be wound up or force one shareholder to buy out the other just because one does not like the other. Without the appellant as a director, API is, relatively speaking, well managed and this is manifested by the rather substantial dividends dished out from time to time to shareholders for their investments. Under these circumstances, there is no justifiable reason why the court in exercising its judicial discretion, based on just and equitable rule, should accede to the demands of the appellant particularly when there is cogent evidence that he did not come with clean hands.

[49] All the foregoing findings based on the facts narrated are also consistent with the principle that winding up of a company should be a remedy of the last resort (see *Dato' Ting Check Sii v. Datuk Hj Mohamad Tufail Mahmud & Anor* [2008] 7 CLJ 453; [2007] 7 MLJ 618; *Liew Jui Hua & Ors v. Johor Property (M) Sdn Bhd* [1998] 2 CLJ Supp 34 and *Weng Wah Construction Co Sdn Bhd v. Yik Foong Development Sdn Bhd* [1994] 3 CLJ 511; [1994] 2 MLJ 266).

[50] On the whole we are conscious that we should not normally intervene against the decision of the lower court. However in the Court of Appeal's case of *Lee Ing Chin & Ors v. Gan Yook Chin & Anor* [2003] 2 CLJ 19 it is said as follows:

> Suffice to say that we re-affirm the proposition that an appellate court will not, generally speaking, intervene unless the trial court is shown to be plainly wrong in arriving at its decision. **But appellate interference will take place in cases where there has been no or insufficient judicial appreciation of the evidence.**
>
> (emphasis added)

[51] Based on the principle above, we are of the view as supported by all the reasons explained, there is indeed a need for appellate intervention in this case.

Conclusion

[52] The appellant should not be wound up based on the three statutory provisions of the CA as found by the High Court. The evidence on the contrary indicates that the winding up of the appellant would not be justifiable or equitable.

[53] Accordingly, we are unanimous in allowing the appeal and setting aside the winding-up order that was made.